

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

06-CR-6016L

v.

LOUIS S. PATT, JR.,

Defendant.

The matter is before this Court on a motion by defendant to review United States Magistrate Judge Marian W. Payson's Order of Detention (Dkt. # 68) entered March 26, 2007. Defendant's motion to reverse and vacate the Order of Detention is granted.

Defendant stands accused in federal court of serious offenses. He has been detained since October 2005 and has been in primary federal custody. Defendant recently pleaded guilty in Wayne County Court to a charge related to matters contained in the federal indictment. Patt received a 5-year term of imprisonment and waived, in writing, the right to appeal or collaterally attack that judgment and sentence.

Because Patt remains in federal custody, though, he has not yet started to serve his state sentence and will not do so until taken into state custody. A prisoner cannot obtain credit against

both federal and state charges at the same time. Defense counsel has elected to take steps to have Patt begin his state sentence, and I see no reason not to grant that request.

As long as Patt is in jail serving a state sentence, there is no realistic risk of danger to the community. There is little likelihood that Patt will suddenly be released from state custody. The Government certainly has the wherewithal to monitor Patt's status with the New York State Department of Corrections and, if it appears that Patt is about to be released, the Government can commence proceedings here for this Court to review Patt's release conditions. As long as Patt is detained and serving a state sentence, the Government cannot demonstrate by a clear and convincing evidence that Patt now poses a danger to the community.

CONCLUSION

The Order of Detention (Dkt. #68) is reversed and vacated. On the federal indictment, Louis Patt is released on his own recognizance, subject to, and without prejudice to, further proceedings should Patt be released from his state sentence.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
April 13, 2007.